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Attorneys For Plaintiff  
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SERVICES COMPANY LLC**

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Attorneys for Defendant  
**FOURTH QUARTER PROPERTIES  
XLVIII, LLC**

[additional counsel listed on signature pages]

UNITED STATES DISTRICT COURT  
  
NORTHERN DISTRICT OF CALIFORNIA  
  
SAN JOSE DIVISION

**MENLO EQUITIES DEVELOPMENT  
SERVICES COMPANY LLC**

Plaintiff,

vs.

**FOURTH QUARTER PROPERTIES  
XLVIII, LLC AND DOES 1 THROUGH 100**

Defendants.

Case No. C 07-00089 JW HRL

**JOINT STIPULATION FOR ISSUANCE  
OF RIGHT TO ATTACH ORDER AND  
ORDER FOR ISSUANCE OF WRIT OF  
ATTACHMENT AND [PROPOSED]  
ORDER**

**JOINT STIPULATION FOR ISSUANCE OF RIGHT TO ATTACH ORDER AND ORDER  
FOR ISSUANCE OF WRIT OF ATTACHMENT**

Plaintiff Menlo Equities Development Services Company LLC (“MEDSCO”) and Defendant Fourth Quarter Properties XLVIII, LLC (“Fourth Quarter”) stipulate as follows:

1. On January 18, 2007, MEDSCO filed an Application for Right to Attach Order, Temporary Protective Order, and Order for Issuance of Writ of Attachment (“Application”) to secure recovery on its claims against Fourth Quarter. Specifically, MEDSCO seeks to attach Fourth Quarter’s real property located in Sunnyvale, California known as the Town Center Mall, or Block 18 in downtown Sunnyvale, exclusive of the parcels owned by Macy’s, Target and Bank of the West (the “Property”). Fourth Quarter anticipates that its sale of the Property will close on or about March 31, 2007.

2. A hearing on MEDSCO’s Application is scheduled for February 26, 2007 at 9:00 a.m. before this Court.

3. In support of its Application, MEDSCO filed an undertaking for \$10,000 on January 3, 2007.

4. On February 22, 2007, the parties agreed in principle to settle the litigation and executed a Term Sheet reflecting their agreement. As part of the settlement, Fourth Quarter will pay to MEDSCO \$882,000. It is anticipated that Fourth Quarter will make this payment from the proceeds of its sale of the Property.

5. The parties further agreed that an attachment on Fourth Quarter’s Property is appropriate to secure the \$882,000 pending Fourth Quarter’s sale of the Property. The parties also agreed to jointly request the Court to issue a writ of attachment on the Property in the amount of \$882,000.

6. Accordingly, the parties stipulate that MEDSCO is entitled to an attachment in the amount of \$882,000 and request the Court to issue to MEDSCO a Right to Attach Order and Order for Issuance of Writ of Attachment. A [Proposed] Right to Attach Order and Order for Issuance of Writ of Attachment is attached hereto as Exhibit A.

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1           7.       The parties further request that the Court direct the court clerk to issue to MEDSCO a  
2 Writ of Attachment. A [Proposed] Writ of Attachment is attached hereto as Exhibit B.

3           8.       The parties stipulate that the February 26, 2007 hearing on MEDSCO's Application  
4 be vacated.

5           9.       Fourth Quarter stipulates that the undertaking Menlo has filed with the Court in the  
6 statutory amount of \$10,000 need not be increased.

7           10.      MEDSCO stipulates that its application for a Temporary Protective Order is moot,  
8 and hereby withdraws the request.

9           IT IS THEREFORE STIPULATED that, subject to the approval of the Court, the Court will  
10 issue to MEDSCO a Right to Attach Order and Order for Issuance of Writ of Attachment, and direct  
11 the court clerk to issue to MEDSCO a Writ of Attachment. It is further stipulated that the February  
12 26, 2007 hearing on MEDSCO's Application be vacated.

13                   Dated: February 23, 2007.

14                   KEKER & VAN NEST, LLP  
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20                   CUSHING, MORRIS, ARMBRUSTER &  
21                   MONTGOMERY, LLP  
22                   Kirk M. McAlpin  
23                   229 Peachtree Street, NE, Suite 2110  
24                   Atlanta, GA 30303  
25                   Tel: 404-614-8117  
26                   Fax: 404-522-0607

27                   By [concurrence obtained, General Order 45, § X.B]  
28                   Kirk M. McAlpin

Attorneys for Defendant  
FOURTH QUARTER PROPERTIES XLVIII, LLC

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**DECLARATION PURSUANT TO GENERAL ORDER 45, § X.B**

I, Robert B. Bader, hereby declare pursuant to General Order 45, § X.B, that I have obtained the concurrence in the filing of this document from Kirk M. McAlpin.

I declare under penalty of perjury that the foregoing declaration is true and correct.

Executed on February 23, 2007 at San Francisco, CA.

Dated: February 23, 2007.

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By: /s/ Robert B. Bader

Attorneys for Plaintiff  
MENLO EQUITIES DEVELOPMENT SERVICES  
COMPANY LLC

\* \* \*

 **[PROPOSED] ORDER**

For good cause shown in the Joint Stipulation for Issuance of Right to Attach Order and Order for Issuance of Writ of Attachment, PURSUANT TO STIPULATION, IT IS SO ORDERED that the Court will issue to MEDSCO the Right to Attach Order and Order for Issuance of Writ of Attachment attached to this Joint Stipulation and Order as Exhibit A, and directs the court clerk to issue to MEDSCO the Writ of Attachment attached to this Joint Stipulation and Order as Exhibit B. The February 26, 2007 hearing on MEDSCO's Application for a Writ of Attachment is VACATED.

Dated: 2/23/2007

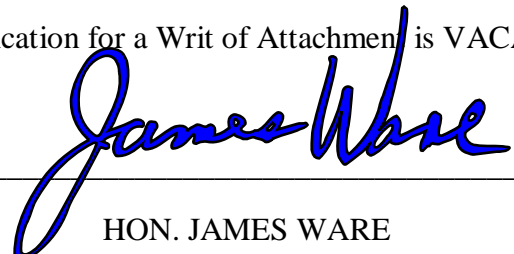
  
HON. JAMES WARE

EXHIBIT A

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MENLO EQUITIES DEVELOPMENT  
SERVICES COMPANY LLC

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

MENLO EQUITIES DEVELOPMENT  
SERVICES COMPANY LLC

Plaintiff,

vs.

FOURTH QUARTER PROPERTIES XLVIII,  
LLC

Defendant.

No.: C 07-00089 JW

*James Ware*  
**[PROPOSED] RIGHT TO ATTACH  
ORDER AND ORDER FOR ISSUANCE OF  
WRIT OF ATTACHMENT**

Date: February 26, 2007  
Time: 9:00 a.m.  
Dept.: 8  
Judge: Hon. James Ware

Date Complaint Filed: December 12, 2006

American LegalNet, Inc.  
www.USCourtForms.com



SHORT TITLE: _____	CASE NUMBER: _____
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**ORDER****3. THE COURT ORDERS**

- a. Plaintiff has a right to attach property of defendant (*name*): Fourth Quarter Properties XLVIII, LLC  
in the amount of: \$ 882,000
- b. ☐ The property described in items 2g(1) and 2h(1) of the findings is exempt and shall not be attached.
- c. The clerk shall issue ☒ a writ of attachment ☐ an additional writ of attachment in the amount stated in item 3a  
☒ forthwith ☐ upon the filing of an undertaking in the amount of: \$
- (1) ☒ for any property of a defendant who is **not** a natural person for which a method of levy is provided.
- (2) ☐ for the property of a defendant who is a natural person that is subject to attachment under Code of Civil Procedure section 487.010, described as follows (*specify*):
- (3) ☐ for the property covered by a bulk sales notice with respect to a bulk transfer by defendant or the proceeds of sale of such property, described as follows (*specify*):
- (4) ☐ for plaintiff's pro rata share of proceeds from an escrow in which defendant's liquor license is sold. The license number is (*specify*):
- d. ☐ Defendant shall transfer to the levying officer possession of
- (1) ☐ any documentary evidence in defendant's possession of title to any property described in item 3c;
- (2) ☐ any documentary evidence in defendant's possession of debt owed to defendant described in item 3c;
- (3) ☐ the following property in defendant's possession (*specify*):

<p><b>NOTICE TO DEFENDANT: FAILURE TO COMPLY WITH THIS ORDER MAY SUBJECT YOU TO ARREST AND PUNISHMENT FOR CONTEMPT OF COURT.</b></p>
--

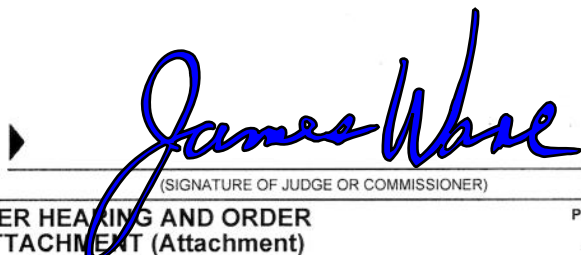
e. ☐ Other (*specify*):

f. Total number of boxes checked in item 3: 3

Date: 2/23/2007

James Ware

(TYPE OR PRINT NAME)



(SIGNATURE OF JUDGE OR COMMISSIONER)



**EXHIBIT B**

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Attorneys For Plaintiff  
MENLO EQUITIES DEVELOPMENT  
SERVICES COMPANY LLC

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

MENLO EQUITIES DEVELOPMENT  
SERVICES COMPANY LLC

Plaintiff,

vs.

FOURTH QUARTER PROPERTIES XLVIII,  
LLC

Defendant.

No.: C 07-00089 JW HRL

 [PROPOSED] WRIT OF ATTACHMENT

AT-135

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):		FOR COURT USE ONLY
TELEPHONE NO.:	FAX NO. (Optional):	
E-MAIL ADDRESS (Optional):		
ATTORNEY FOR (Name):		
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PLAINTIFF:		
DEFENDANT:		
<b>WRIT OF ATTACHMENT</b> <input checked="" type="checkbox"/> AFTER HEARING <input type="checkbox"/> EX PARTE		CASE NUMBER:

1. TO THE SHERIFF OR ANY MARSHAL OR CONSTABLE OF THE COUNTY OF: Santa Clara
2. TO ANY REGISTERED PROCESS SERVER: You are only authorized to serve this writ in accord with CCP 488.080.
3. This writ is to attach property of defendant (name and last known address): Fourth Quarter Properties XLVIII, LLC  
45 Ansley Drive  
Newnan, GA 30263  
  
and the attachment is to secure: \$ 882,000
4. Name and address of plaintiff: Menlo Equities Development Services Company LLC  
490 California Avenue, 4th Floor  
Palo Alto, CA 94306
5. YOU ARE DIRECTED TO ATTACH the following property or so much thereof as is clearly sufficient to satisfy the amount to be secured by the attachment (describe property and state its location; itemize by letter):

☒ This information is on an attached sheet.

6. ☐ An interest in the real property described in item 5 stands upon the records of the county, in the name of the following person other than the defendant:

a. Name:

b. Mailing address, if known, as shown by the records of the office of the county tax assessor (specify):

7. ☐ The real property on which the
- ☐ crops described in item 5 \_\_ are growing
- ☐ timber described in item 5 \_\_ to be cut is standing stands upon the records of the county in the name of
- a. Name:
- b. Address:

[SEAL]

Date: 2/23/2007

Clerk, by /s/ Elizabeth C. Garcia, Deputy Clerk

Page 1 of 1

### LEGAL DESCRIPTION

Real property in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

**PARCEL ONE:**

PORTIONS OF LOTS 9 AND 10, IN BLOCK 8 OF SAID LOTS AND BLOCK ARE SHOWN ON THE "MAP OF THE TOWN OF ENCINAL", RECORDED IN BOOK "I" OF MAPS, PAGE 88, SANTA CLARA COUNTY RECORDS, SAID PORTIONS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE NORTHERLY LINE OF MCKINLEY AVENUE, 60 FEET WIDE, WITH THE NOW EXISTING EASTERLY LINE OF MATHILDA AVE, BEING A LINE PARALLEL WITH AND DISTANCE EASTERLY MEASURED AT RIGHT ANGLES 65 FEET FROM THE CENTERLINE OF MATHILDA AVENUE, AS SHOWN ON SAID MAP, THENCE NORTH 14°, 52' EAST ALONG SAID PARALLEL LINE 240.00 FEET TO THE TRUE POINT OF BEGINNING, THENCE CONTINUING NORTH 14° 52' EAST ALONG SAID PARALLEL LINE 100.00 FEET; THENCE SOUTH 75° 08' EAST 125.00 FEET, THENCE AT RIGHT ANGLES SOUTH 14° 52' WEST 100.00 FEET; THENCE NORTH 75° 08' WEST AT RIGHT ANGLES, 125.00 FEET TO SAID WESTERLY LINE OF MATHILDA AVENUE AND THE TRUE POINT OF BEGINNING.

**PARCEL TWO:**

PARCEL 6 AS SHOWN ON THE CERTAIN PARCEL MAP FILED MAY 25, 2000 IN THE OFFICE OF THE RECORDER, SANTA CLARA COUNTY, CALIFORNIA IN BOOK 728 OF MAPS, PAGES 6, 7, 8, AND 9.

**PARCEL THREE:**

PARCEL 4 AS SHOWN ON THE CERTAIN PARCEL MAP FILED MAY 25, 2000 IN THE OFFICE OF THE RECORDER, SANTA CLARA COUNTY, CALIFORNIA IN BOOK 728 OF MAPS, PAGES 6, 7, 8, AND 9.

**PARCEL FOUR:**

THOSE CERTAIN EASEMENTS APPURTENANT TO PARCELS TWO AND THREE DESCRIBED HEREIN, AS GRANTED IN AND CREATED BY SECTION II -"EASEMENT" OF THAT CERTAIN DOCUMENT ENTITLED, "CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT AGREEMENT (THE ORIGINAL REA)" DATED MARCH 1, 1978, EXECUTED BY AND BETWEEN SUNNYVALE TOWNCENTER ASSOCIATES, A CALIFORNIA CORPORATION LIMITED PARTNERSHIP; SUN TOWNCENTER PROPERTIES CORPS, A CALIFORNIA CORPORATION; MONTGOMERY WATER DEVELOPMENT CORPORATION, A DELAWARE CORPORATION; AND THE REDEVELOPMENT AGENCY OF THE CITY OF SUNNYVALE, CALIFORNIA, A PUBLIC BODY, CORPORATE AND POLITIC, RECORDED JULY 27, 1978 AS DOCUMENT NO. 6089790, AS THE SAME WAS AMENDED BY (I) AMENDMENT NO. 1 TO THE ORIGINAL REA DATED AS OF JUNE 30, 1980, AND RECORDED SEPTEMBER 5, 1980, AS INSTRUMENT NO. 6826488, BOOK F557, PAGE 463, IN THE OFFICE OF THE RECORDER OF SANTA CLARA COUNTY, CALIFORNIA (THE "AMENDMENT NO. 1"); AND (II) AMENDMENT NO. 2 TO THE ORIGINAL REA DATED AS OF JULY 26, 1995, RECORDED JULY 26, 1995 AS INSTRUMENTS NOS. 12962761 & 12962762 IN THE OFFICIAL RECORDS OF SANTA CLARA COUNTY, CALIFORNIA (THE "AMENDMENT NO. 2") AND



(III) AMENDMENT NO. 3 TO THE ORIGINAL REA RECORDED MAY 25, 2000 AS INSTRUMENT NO. 151261167 IN THE OFFICIAL RECORDS OF SANTA CLARA COUNTY, CALIFORNIA; INCLUDING, WITHOUT LIMITATION, NON-EXCLUSIVE EASEMENTS FOR VEHICULAR AND PEDESTRIAN INGRESS, EGRESS, AUTOMOBILE PARKING, UTILITIES, CONSTRUCTION, RECONSTRUCTION, ERECTION, REMOVAL AND MAINTENANCE OF COMMON BUILDING COMPONENTS, FOOTINGS, FOUNDATIONS, SUPPORTS, AND COMMON WALLS, CANOPIES, FLAG POLES, ROOF AND BUILDING OVERHANGS, AWNINGS, ALARM BELLS, SIGNS, LIGHTS AND LIGHTING DEVICES AND SIMILAR APPURTENANCES, ELECTRICAL VAULTS AND HVAC EXHAUST SHAFTS, CONSTRUCTION, ATTACHMENT, SUPPORT, MAINTENANCE AND REPAIR OF AERIAL PEDESTRIAN BRIDGES AND FIRE AND SERVICE CORRIDORS IN, OVER AND ACROSS THE "COMMON AREA", AS DEFINED IN SAID DOCUMENT, OF THE LAND DESCRIBED IN PARTS 3, 4 AND 5 OF EXHIBIT "A" ATTACHED TO SAID DOCUMENTS.

PARCEL FIVE-A:

ALL OF PARCEL ONE (I) OF THAT PARCEL MAP ENTITLED, "SUNNYVALE TOWN CENTER," FILED AUGUST 28, 1991, IN BOOK 630, AT PAGES 6, 7 AND 8, UNDER SERIAL NO. 11038481, OF PARCEL MAPS, OFFICIAL RECORDS OF SANTA CLARA COUNTY, CALIFORNIA.

PARCEL FIVE-B:

ALL EASEMENTS APPURTENANT TO PARCEL FIVE-A HEREIN, INCLUDING, BUT NOT LIMITED TO EASEMENTS FOR INGRESS AND EGRESS, AUTOMOBILE PARKING, PEDESTRIAN USES, CONSTRUCTION, INSTALLATION, OPERATION AND MAINTENANCE OF SEPARATE AND COMMON UTILITY LINES, STRUCTURE SUPPORT, SIGNS AND OTHER USES, ALL OR MORE PARTICULARLY GRANTED BY THAT CERTAIN DOCUMENT ENTITLED:

1. CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT AGREEMENT (SUNNYVALE, CALIFORNIA), DATED MARCH 1, 1978, EXECUTED BY AND BETWEEN SUNNYVALE TOWNCENTER ASSOCIATES, A CALIFORNIA LIMITED PARTNERSHIP; SUN TOWNCENTER PROPERTIES CORP., A CALIFORNIA CORPORATION; MONTGOMERY WARD DEVELOPMENT CORPORATION, A DELAWARE CORPORATION; AND THE REDEVELOPMENT AGENCY OF THE CITY OF SUNNYVALE, CALIFORNIA, A PUBLIC BODY, CORPORATE AND POLITIC, RECORDED JULY 27, 1978, IN BOOK D842, PAGE 40, OFFICIAL RECORDS OF SANTA CLARA COUNTY, CALIFORNIA.
2. AMENDMENT NO. 1 TO CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT AGREEMENT, RECORDED SEPTEMBER 5, 1980, IN BOOK F557, PAGE 463, OFFICIAL RECORDS OF SANTA CLARA COUNTY, CALIFORNIA.
3. AMENDMENT NO. 2 TO CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT AGREEMENT, RECORDED JULY 26, 1995, UNDER SERIES NO. 12962761, OFFICIAL RECORDS OF SANTA CLARA COUNTY, CALIFORNIA, AND SERIES NO. 12962762, OFFICIAL RECORDS OF SANTA CLARA COUNTY CALIFORNIA.
4. AMENDMENT NO. 3 TO CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT AGREEMENT, RECORDED MAY 25, 2000, UNDER SERIES NO. 15261167, OFFICIAL RECORDS OF SANTA CLARA COUNTY CALIFORNIA.

APN: 209-34-009, 209-34-018, 209-35-012 and 209-35-007